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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,718	02/06/2002	David K. Mesecher	I-2-108.3US	9798
24374	7590	01/22/2003	EXAMINER	
VOLPE AND KOENIG, PC DEPT ICC SUITE 400, ONE PENN CENTER 1617 JOHN F. KENNEDY BOULEVARD PHILADELPHIA, PA 19103			GHEBRETIINSAE, TEMESGHEN	
		ART UNIT		PAPER NUMBER
		2631		

DATE MAILED: 01/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>10/068,718</b>	Applicant(s) <b>Mesecher</b>
	Examiner <b>Temesghen Ghebretinsae</b>	Art Unit <b>2631</b>



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-16 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other:

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## **DETAILED ACTION**

1. It would be of great assistance to the Office if all incoming papers pertaining to a filed application carried the following items:

1. Application number (checked for accuracy, including series code and serial no.).
2. Group art unit number (copied from most recent Office communication).
3. Filing date.
4. Name of the examiner who prepared the most recent Office action.
5. Title of invention.
6. Confirmation number (See MPEP § 503).

### ***Information Disclosure Statement***

2. The references listed in the PTO-1449 filed 2/02/02 have been considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

3. Claims 8-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 8 and 13 "the weighted first signals" lack clear antecedent basis. In claim 11 and 16, "the weighted each filtered firs signal" lack clear antecedent basis.

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***Double Patenting***

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 8-16 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-9 of copending Application No. 10/068,668. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipate by Kanzaki et al.  
(5,652,764)

Kanzaki discloses a communication system comprising: a plurality of transmitting antennas for transmitting a plurality of reference signals having a code uniquely associated with that antenna; a plurality of reference signal generator; a data signal generator and a plurality of mixers for producing the plurality of the data signal, each mixer for mixing the data signal with different code. The communication system transmissions are in TDD format. (See figs.1 and 10, col.3, line 63 to col. 4, line 18; col.7, lines 15 to 36)

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 1-3,5-6 are rejected under 35 U.S.C. 102(a) as being anticipated by Yashida et al  
(5,886,987).

Yashida discloses a transmission /reception system comprising: a plurality of transmitting antennas for transmitting a plurality of reference signal and data signals; a plurality of reference signal generator; a data signal generator for producing a data signal; and a plurality of mixers for producing the plurality of the data signal. The system further comprises at least one addition data signals generator for producing at least one additional data signal; and a plurality of mixers for producing a plurality of versions of that at least one additional data signal.(see fig.1, col.3, line 57 to col. 4, line 520

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*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lomp et al (5,991,332) is cited to show a CDMA transmitter having a code generator which provides an associate pilot code signal; a spreading circuit for spreading the message signal by combining each information signals with a respective one of the message code signals.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to T.Ghebretinsae whose telephone number is 703-305-4777. The examiner can normally be reached on Monday-Friday from 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (703) 305-4378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

T.Ghebretinsae

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**TEMESGHEN GHEBRETIINSAE**

**PRIMARY EXAMINER**

1/16/03.